THE HON'BLE SRI JUSTICE N.V. RAMANA

WRIT PETITION NO.15773 OF 1996

Dated: 16.09.2005

Between:

Brahmandam Venkata Subbaiah (Died), s/o Sitaramayya,

cultivation, R/o Returu, Guntur District and another.

..... PETITIONER

AND

1. The State of A.P., rep. by its Assistant Commissioner of

Endowments, Guntur, and 3 others.

....RESPONDENTS

THE HON'BLE SRI JUSTICE N.V. RAMANA

WRIT PETITION NO.15773 OF 1996

ORDER:

Questioning the proceedings in Rc.No.A3/1296/96, dated 22.07.1996 of the 1st respondent-Assistant Commissioner of Endowments, directing the petitioner to handover all the accounts and records, moveable and immoveable properties relating to the subject choultry to one N. Kotaiah, Executive Officer, Kakumanu

group temples, the present writ petition is filed.

The petitioner states that his grand father late Brahmandam Gangaraju established the private choultry known as “Brahmandam Gangaraju Choultry” in or about 1890, and the same has been under the control and management of their family members since then. It is stated that at the instance of the 4th respondent, the 2nd respondent-Inspector of Endowments, vide his memo No.713/95, dated 16.09.1995 directed the petitioner to produce account books for inspection, for which the petitioner got issued a reply notice dated 03.10.1995 stating that the Endowments Department has no authority whatsoever over the choultry, for it is their personal and private property. It is the case of the petitioner that the 1st respondent, without issuing any prior notice and without affording any opportunity of hearing to him, passed the impugned proceedings arbitrarily. Hence, the present writ petition.

A counter affidavit is filed by the 3rd respondent-Executive Officer denying the allegations of the petitioner, *inter alia* stating that the choultry in question is not the private property of the petitioner and it is meant for public purpose. It is stated that based on the enquiry reports of the 1st and 2nd respondent, submitted in pursuance of the representations made by the villagers of Returu with regard to mismanagement of choultry by the petitioner, the Commissioner of Endowments vide proceedings in Rc.No.J3/12206/96, dated 22.03.1996 notified the institution as a public choultry under Section 6 (c) of the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987 (Act 30 of 1987) (for short “the Act”), and in pursuance of the said notification, the impugned proceedings came to be passed. It is further stated that once the institution is notified under Section 6(c) of the Act as a public choultry, the petitioner has to approach the Deputy Commissioner under Section 87of the Act to declare the choultry as private property.

Heard the learned counsel for petitioner and learned Government Pleader for Endowments.

Learned counsel for the petitioner submits that the subject choultry is their family property and the respondents have no power or authority whatsoever to issue the impugned proceedings notifying the same as public choultry and direct the petitioner to hand over all the accounts and records, moveable and immoveable properties relating to the subject choultry to one N. Kotaiah, Executive Officer,

Kakumanu group temples.

On the other hand, learned Government Pleader for Endowments submits that the petitioner has not questioned the notification issued under Section 6 (c) of the Act on 22.03.1996, declaring the choultry as a public choultry, which was issued, much before the impugned order came to be passed. The petitioner having not questioned the said notification, cannot question the consequential impugned proceedings. He further submits that against the impugned proceedings, the petitioner has an efficacious alternative remedy under Section 87 of the Act to approach the Deputy Commissioner to declare the property as his private property, and until and unless he obtains such relief from the Deputy Commissioner, he cannot claim that the choultry to be his private property, and in support of his contention, he relied on a Division Bench judgment of this Court in ***"M. RAMASWAMY Vs., COMMISSIONER OF ENDOWMENTS"***.

Admittedly, the petitioner, who is claiming the subject choultry to be his private property, has not questioned the notification issued under Section 6 (c) of the Act on 22.03.1996, declaring the choultry as public property, which was issued much before the passing of the impugned proceedings. Be that as it may, whether the subject choultlry is a private property or public property is a disputed question of fact, which cannot be gone into and decided in this writ petition. As against the impugned proceedings, the petitioner has an efficacious alternative remedy under Section 87 of the Act to approach the Deputy Commissioner to declare the property as his private property, and until and unless he obtains such relief from the Deputy Commissioner, he cannot claim that the choultry to be his private property. The petitioner without availing such effective alternative remedy, has straight away approached this Court by filing the present writ petition. In that view of the matter, no interference is called for with the impugned proceedings.

Accordingly, the writ petition is dismissed. However, the petitioner is at liberty to approach the Deputy Commissioner, Endowments, under Section 87 of the Act, to declare the choultry as his private property, within a period of four weeks from the date of receipt of a copy of this order. Till such time, *status quo* existing as on today shall be maintained by the parties. No costs.

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N.V. RAMANA, J.

Date: 16.09.2005

Nsr/Ksr